2024: Year in Review

The promise of decentralized finance remains as real as ever, even as fundamental questions about America's regulatory approach to crypto remain unresolved. As the only organization based in Washington, DC, with the sole mission to advocate for decentralized finance ("DeFi") developers and users, we have worked hard to educate lawmakers and regulators about the promise of DeFi, how this technology actually works, and why it is important to protect the rights of software developers and DeFi users. We also defended the industry against the unprecedented assault by the SEC and other federal regulators over the last several years.

Tides seem to be shifting. 2024 marked a sea change in DeFi and crypto policy. In Congress, FIT21 passed the House, and Congress held its first DeFi hearing (at which our Chief Legal Officer Amanda Tuminelli testified). In the judiciary, the Fifth Circuit found that the Treasury Department acted unlawfully when it designated Tornado Cash smart contracts under its existing sanctions authorities, and the courts struck down the SEC's dealer rule.

We're proud to have taken the fight directly to the courts, regulatory agencies, and Capitol Hill. And looking to 2025, our mandate remains unchanged: to protect and advance DeFi's development through targeted advocacy, education, and when necessary, litigation.

Without further wait, here is a summary of our work in 2024:

Taking the SEC to Court: DEF advanced two significant legal challenges against the SEC in 2024:

Beba and DeFi Education Fund v. SEC
In March, DEF and Beba, a Waco, Texas-based apparel company, sued the Securities and Exchange Commission ("SEC") in the Western District of Texas seeking a court order declaring that 1) the SEC violated the Administrative Procedure Act ("APA") when it adopted a policy, behind closed doors, that "nearly all tokens are securities" and 2) $BEBA token free airdrops are not securities transactions. As we wrote in our blog announcing the suit, this action is all "about reining in unchecked agency power and overreach."

In October, we filed our opposition to the SEC's motion to dismiss, in which the Commission argued the amended complaint should be dismissed on procedural and jurisdictional grounds, and did not substantively address the merits of the claims. We responded to each of the SEC's arguments on standing, ripeness, and sovereign immunity in the opposition. We expect to receive a decision on the SEC's motion to dismiss in early 2025.

The case has drawn significant support from industry stakeholders, with multiple amicus briefs highlighting how the SEC's approach chills innovation and exceeds its statutory authority. The amici provide important information to the court, explaining why the SEC's approach to airdrops and its regulation by enforcement campaign against the industry are unlawful, have a significant chilling effect on innovation, and should be stopped.

If you want to learn more about this case, click through the hyperlinks above. Major media coverage of our efforts follows below.

- ➔ Axios: Texas apparel company hits SEC with preemptive lawsuit over airdropped token (March 2024)
- ➔ Law360: Crypto Group, Apparel Co. Sue Over SEC Crypto Policy (March 2024)
- ➔ Bloomberg Law: DeFi Group, Apparel Co. Sue SEC Over Closed-Door Crypto Policy (March 2024)
- ➔ The Block: Crypto lobbying groups file court brief supporting lawsuit against SEC, seeks clarity over token airdrops (October 2024)

States Unite Against SEC Overreach

In November, in a major moment for crypto regulation, DEF joined forces with Kentucky, Nebraska, and 16 other states to mount a direct challenge to the SEC's jurisdiction over digital assets. This coalition seeks two critical declarations from the court: 1) that digital asset transactions occurring without managerial obligations or profit-sharing agreements are not "investment contracts" under securities laws; 2) that the SEC violated administrative law by unilaterally deeming secondary digital asset transactions as securities and their facilitating platforms as regulated entities.

The case represents the most significant state-level pushback against federal crypto regulation to date and signals growing concern over federal overreach in digital asset markets.

We are incredibly grateful to Kentucky, Nebraska, Tennessee, West Virginia, Iowa, Texas, Mississippi, Montana, Arkansas, Ohio, Kansas, Missouri, Indiana, Utah, Louisiana, South Carolina, Oklahoma, and Florida for joining us to bring this action.

Making DeFi's Case to Congress: In a major milestone for the industry, in September, the House Financial Services (HFSC) Subcommittee on Digital Assets, Financial Technology and Inclusion held Congress' first ever DeFi-Focused hearing: "Decoding DeFi: Breaking Down the Future of Decentralized Finance."

Our very own Amanda Tuminelli, DEF's Chief Legal Officer, testified before the committee. Amanda's remarks cut to the heart of DeFi's promise - and its regulatory challenges: "Existing law assumes that there is some identifiable entity that can take possession of my funds, collect information about my transaction, and even block a trade, but that entity does not exist in DeFi. The untenable position between the law as it stands and the reality of DeFi technology has led to an increasing amount of regulatory uncertainty…..That's why judges in multiple district courts across this country have called on Congress to make new rules regarding digital assets, and this chamber has supported bipartisan efforts and signaled that the status quo is not working for DeFi and digital assets."

Of note, Amanda's powerful opening statement left the subcommittee with two main points: First, DeFi is different from, and an improvement upon, traditional finance, because it does not rely on intermediaries. And second, the existing approach of demanding that DeFi look like, function like, or be treated like traditional finance has not and will not work. Amanda explained to the committee how DeFi enables open-access, peer-to-peer transactions in which users self-custody their assets, embodying DeFi's financial inclusion and addressing the pitfalls of traditional finance.

Other witnesses in the hearing included Polygon Chief Legal Officer Rebecca Rettig, Coin Center Research Director Peter Van Valkenburgh, Universal Decentralized Holdings Corporation's Chief Legal Officer Brian Avello, and Americans for Financial Freedom Senior Policy Analyst Mark Allen Hayes.

Further supporting the industry with amicus briefs: as a continuation of our strategy, we aim to educate the courts around the importance of DeFi and how it actually functions, and advocate for positions favorable to its development as amicus curiae in precedent setting cases.

- ➔ *SEC v. Kraken:* In March, we filed an amicus brief in the Northern District of California in support of Kraken's motion to dismiss the SEC's complaint. In November 2023, the SEC sued Payward Ventures Inc. and Payward Inc., the business entities behind Kraken, alleging that Kraken operated as an unregistered broker, dealer, exchange, and clearing agency. Our brief had two primary focuses: the SEC's various theories to classify all digital assets as per se securities are wrong; and SEC's ever-changing theories are unsupported by the law and underscore its failure to engage with industry participants with clear regulation and guidance.

- ➔ *U.S. v. Storm:* In April, we filed an amicus brief in the Southern District of New York in support of Roman Storm's Motion to Dismiss the Indictment against him. As a quick refresher, in August of 2023, the U.S. Department of Justice (DOJ) indicted Roman Storm and Roman Semenov, the developers of the smart contract protocol Tornado Cash. The DOJ alleged three wide-ranging conspiracies in the Indictment, including money laundering, operating an unlicensed money transmitting business, and violating the International Emergency Economic Powers Act (IEEPA). Our position in our brief is simple: the novel theories in the Indictment are unprecedented and not supported by allegations that reflect the reality of the technology. For example, the DOJ's theory of the IEEPA claim hinges on expanding precedent far beyond previous sanctions cases. Based on our extensive research, previous cases of IEEPA conspiracy included allegations that individuals purposely and knowingly transmitting money or goods to a sanctioned entity - meaning the accused directly and actively engaged with a sanctioned entity. In none of the previous cases did the government allege that the defendant was responsible for violating IEEPA because they created some tool or technology and later became aware that it was used by a sanctioned entity.

- ➔ *Davidson v. SEC:* In August, DEF filed an amicus brief in *Davidson v. SEC,* raising concerns about the serious threat to individual privacy posed to American crypto users by the Consolidated Audit Trail (CAT). The SEC's CAT requires every national securities exchange and broker-dealer to provide securities transaction information to a large government database. While the CAT pertains to securities transactions, we argue that if the SEC's claims of broad authority over digital assets were correct, the vast majority of digital asset market participants would have their information reported into the CAT, and the CAT could link personally identifying information with wallet addresses and reveal blockchain-based user transactions of all kinds, raising serious privacy concerns.

Winning our fight against an invalid patent: In August, we resolved all disputes related to the patent claiming invention of oracle-like technology owned by True Return Systems. DEF reached an agreement with True Return Systems to purchase the patent and for True Return Systems to dismiss the ongoing litigations against Compound Protocol and Maker DAO. With the patent in hand, we dedicated it to the public so that the patent can never again be used against those deploying oracle technology.

DeFi Education Fund

Pushing back against misguided regulatory actions: DEF submitted many comment letters on proposed U.S. government agency rulemakings to advocate for DeFi-friendly outcomes.

- ➔ In November, we filed an additional comment letter to the Internal Revenue Service (IRS) in response to the Comment Request for Digital Asset Proceeds from Broker Transactions, which asks for comments related to the new tax form 1099-DA for reporting digital asset transactions in light of the Paperwork Reduction Act (PRA). At a high-level, the comment letter argued, among other things, that Treasury's estimates regarding the burden on brokers to comply with the rule—originally 2.15 million hours and later adjusted to 2.25 million hours—is inaccurate and grossly underestimated, misleadingly focusing on the reporting requirement on a "per customer" rather than a "per transaction" basis, resulting in a vastly understated workload for brokers who may need to process multiple forms for each customer.

- ➔ In October, we filed a comment letter to nine federal agencies, including the SEC, CFTC, and FDIC, regarding their proposed rule to establish data standards for collections of information reported to the Agencies under Section 124 of the Financial Stability Act of 2010 (FSA), which was added pursuant to Section 5811 of the Financial Data Transparency Act of 2022 (FDTA). We focused our comments on Section 124(c)(1)(A) of the FSA, which requires the joint standards to include a common nonproprietary legal entity identifier (LEI) that is available under an open license for all entities required to report to the Agencies, arguing that the Agencies should reconsider using the LEI as the joint standard because of the costs imposed and certain features of the LEI system.

- ➔ In June, we submitted a second comment letter in response to the IRS's proposed information collection with respect to digital asset proceeds from broker transactions related to their proposed broker rule from August of last year. We argued that if finalized in their current form, the proposed regulations would prevent the IRS from adhering to its information collection obligations under the Paperwork Reduction Act (PRA).

- ➔ In January, we submitted a comment letter to the Financial Crimes Enforcement Network (FinCEN) in response to their proposed rulemaking, titled "Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class Of Transactions of Primary Money Laundering Concern." While we supported FinCEN's goal of creating policy that will prevent illicit activity, we argued that the proposed rule will, at best, only minimally achieve its stated goals and come at a high cost. Specifically, we argued that there are existing regulatory requirements under the Bank Secrecy Act (BSA) that provide for the collection, retention, and reporting of nearly the same information as described in this proposal. FinCEN and its government partners need only clarify, examine for compliance with, enforce, and potentially update these existing requirements to accomplish the Proposal's goals.

- ➔ In January, we submitted a comment letter on the Consumer Financial Protection Bureau's (CFPB) proposed rulemaking, "Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications." While DEF shared the CFPB's objective of empowering and protecting consumers, we argued that the proposed rulemaking should not be finalized in its current form and the CFPB should defer any further action until Congress provides a comprehensive legislative direction.

- In a win for the industry, in November the CFPB went ahead and finalized this rule, and importantly excluded crypto, noting that "only transactions conducted in U.S. dollars" would be covered.

Sharing Insights in Long-Form Pieces: This year, DEF published two significant papers exploring critical topics impacting DeFi and DeFi developers.

- ➔ In November, DEF's Lizandro Pieper and Gavin Zavatone published a paper entitled "Square Peg in a Round Hole: Why the Bank Secrecy Act Should Not Apply to Blockchain Participants." The paper investigates the history and design of the BSA, its application to crypto, and explains why software providers and operators across the technology stack are not subject to the BSA.

- ➔ In December, DEF's Amanda Tuminelli and Variant's Daniel Barabander and Jake Chervinsky co-authored a paper in *The International Academy of Financial Crime Litigators* entitled "Through the Looking Glass: Conceptualizing Control and Analyzing Criminal Liability For Unlicensed Money Transmitting Businesses Under Section 1960." The paper takes a deep dive into 8 U.S.C. § 1960, a statute at the center of the Tornado Cash and Samurai Wallet cases, criminalizing the operation of an "unlicensed money transmitting business" and subjecting violators to harsh penalties, in an effort to provide clarity on who exactly the statute exposes to criminal liability.

Bring on 2025
It's no secret that we have wind in our sails, but to achieve the positive, lasting change we seek we must continue to position ourselves for success in the coming year. Here are a few of the issues that will be top of mind for us in 2025.

First, let's look at Congress:

Continuing work around providing clarity to the industry: When Congress gets back to work in January 2025, there will be a handful of national priorities that will need to be addressed, crypto being just one of many. While we cannot totally predict what lies ahead, we expect 2025 to bring continued debate with modest tangible outcomes. We expect debate to continue on legislative topics such as market structure and stablecoins, providing clarity and fixes surrounding tax obligations, anti-money laundering efforts, and countering the financing of terrorism. As a reminder, bills like the Financial Innovation and Technology for the 21st Century Act ("FIT21") and the Clarity for Payment Stablecoins Act will need to be reintroduced in a new Congress. Furthermore, this year we are hopeful that Congress will take up the cause of reforming, or attempting to address the Bank Secrecy Act and relevant statutes, and 18 USC 1960. What we said last year remains true today: we remain committed to working with all members to ensure that policy objectives are met in manners conducive with the novel technology at play.

Moving on to the executive branch:

A new administration could represent a "fresh start." There are many outstanding rulemakings at various executive agencies that have yet to be finalized, including the SEC's "exchange" rulemaking, as well as unresolved litigation, including *Coinbase v. SEC*. It is within the SEC's power to drop their case against Coinbase or the other centralized exchanges, or offer a resolution that provides a path to registration without being punitive. How incoming agency leadership handles these important issues will hopefully set the stage for a fresh start and a clean slate for industry-regulator interactions. Additionally,

we have seen signals that the incoming administration would like to dedicate more resources to the crypto space. Whether that is the appointment of a "crypto czar" or executive orders regarding crypto, the proof will be in the pudding and we look forward to working with the new administration.

Lastly, we turn to the judiciary:

Answering fundamental questions about developer liability and privacy rights: 2024 saw some victories against government overreach, including vacating the SEC's "Dealer" rule and a decision from the 5th Circuit Court of Appeals ruling that the U.S. Treasury exceeded its authority by sanctioning immutable Tornado Cash smart contracts under IEEPA. However, 2024 also saw a flurry of cases that touch on core issues surrounding developer liability and privacy rights, including criminal cases related to Samurai Wallet and Tornado Cash. Decisions in these matters in the coming year have the power to vindicate the rights of software developers or chill innovation by making it too high-stakes to develop software in this country.

Awaiting outcomes in DEF's cases against the SEC: In the new year, we expect further developments in each of our cases against the SEC. In our case with Beba related to the SEC's classification of Airdrops, we are optimistic that the SEC's motion will be denied and the case will proceed to discovery, allowing us to gather crucial evidence regarding the SEC's digital asset policy. And in our case alongside 18 states, we await the SEC's response and will be sure to keep the community informed as the case progresses.

Thank You!
In 2024, we proudly celebrated three years since our inception. This milestone would not have been possible without your active engagement on critical issues affecting the DeFi ecosystem. For that, we extend our heartfelt gratitude and appreciation.

Looking ahead, whether it's in Congress, with regulators, or in the courts, all signs point to 2025 being a pivotal year for significant progress. To maximize our impact, we depend on your support and contributions.

We remain steadfast in our belief that DeFi has the power to break down barriers, enable global participation in the financial system, and foster prosperity for all. As we continue this journey, we hope you will stand with us and join our efforts to advocate for these transformative changes in 2025.

Sincerely,
The DEF Team

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